

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LAMONT J. MARSHAL,)
v. Plaintiff,) Civil Action No. 06 - 215J
v.) Judge Kim R. Gibson /
Plaintiff,) Magistrate Judge Lisa Pupo Lenihan
v.) Doc. Nos. 27, 29
v.)
SAM LOMBARDO, *Warden*; JAMES)
MCCLOSKEY, *Deputy Warden*; DR. CATHY)
MOYER; MICHELLE WORMUTH, *LPN*;)
HONORABLE FREDRIC J. AMMERMAN,)
Chairman, Clearfield County Prison Board;)
MARK MCCRACKEN, *County*)
Commissioner; MIKE LYTLE, *County*)
Commissioner; REX READ, *County*)
Commissioner; JR. WILLIAM A. SHAW,)
District Attorney; DON M. MCCLUSICK,)
Director of Probation; CHESTER HAWKINS,)
Sheriff; and CLAUDIA READ, *Controller*)
Defendants.)

ORDER

Plaintiff, Lamont J. Marshal, a prisoner at Clearfield County Prison, has submitted a complaint for filing in this district along with a motion to proceed in forma pauperis, which has been granted. His complaint alleges certain civil rights violations, including but not limited to an alleged violation, by certain medical personnel of the prison, of his rights pursuant to the 8th Amendment based upon their deliberate indifference to his medical needs. One of those defendants, Michelle Wormuth, LPN, has filed a Praecept for Judgment of Non Pros pursuant to the Pennsylvania Rule of Civil Procedure 1042.6. This rule requires a certificate of merit to accompany any state court action alleging negligence via medical malpractice.

Without arguing the applicability of the Pennsylvania Rules of Civil Procedure to a civil rights action pending before this federal court, the Court points out that Plaintiff is not accusing Ms. Wormuth of negligence, or of medical malpractice, but is, in fact, alleging a violation of his 8th amendment rights due to her deliberate indifference to his medical needs. There is no requirement that Plaintiff file a certificate of merit with this action. In response to Plaintiff's Motion to Strike the Praecipe, defendants allege that the allegations in Plaintiff's Complaint do not establish a violation of any constitutional right. That is the subject of a motion to dismiss, not a praecipe for non pros. Therefore,

IT IS ORDERED, this 31 st day of January, 2007, that the Praecipe for Judgment of Non Pros is **DENIED**;

IT IS FURTHER ORDERED that the Motion to Strike the Praecipe is **DENIED** as moot;

AND IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.



Lisa Pupo Lenihan
U.S. Magistrate Judge

cc:

Lamont J. Marshal
06-000285
Clearfield County Prison
115 21st Street
Clearfield, PA 16830

Counsel of Record